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COMMITTEE ON THE RIGHTS OF THE CHILD

Fifth session

SUMMARY RECORD OF THE 109th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 13 January 1994, at 10 a.m.

Chairperson: Mrs. BADRAN

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The meeting was called to order at 10.20 a.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 44 OF THE CONVENTION (agenda item 5) (continued)

Namibia (CRC/C/3/Add.12; CRC/C.4/WP.4)

At the invitation of the Chairperson, Mrs. Amathila and Mr. Iipumbu (Namibia) took seats at the Committee table.

1. Mrs. AMATHILA (Namibia) introducing the report of her country (CRC/C/3/Add.12), recalled that at the time of independence in 1990 there had been a multitude of children living on the streets, alienated by society and regarded as criminals. Although they had initially been hostile towards adults the situation had begun to change when the Ministry of Regional and Local Government and Housing had been given the responsibility for such children. The Ministry personnel had gained their trust and an interministerial committee had been set up to examine the situation of Namibian children in general. After six months, children who had taken part in the Ministry's rehabilitation programme had been placed either in normal schools or in the only industrial school available, and were still there. The derogatory term "street kids" had been replaced by the expression "children under difficult circumstances".

2. She expressed her willingness to answer the Committee's questions, at the same time drawing attention to the fact that criticisms of her country, in relation to the incidence of child mortality in Namibia, for example, had been politically motivated and had been successfully rebutted by an independent group of lawyers.

3. The CHAIRPERSON invited the members of the Committee to comment on the report of Namibia as well as on the written replies relating to the section of the list of issues entitled "General measures of implementation" in document CRC/C.4/WP.4 which read:

"General measures of implementation

(Arts. 4, 42 and 44, para. 6 of the Convention)

1. Please provide more details about the process of preparing the report.

2. What concrete measures have been taken to make the report widely available to the public at large (para. 31 of the report)?

3. Please indicate how the measures planned for creating more widespread awareness among adults and children about the principles and provisions of the Convention (paras. 29 and 30 of the report) have been implemented?

4. To what extent have school curricula been adjusted to give room for education about the Convention? What measures have been taken to train professional groups about the Convention?

5. What more has been done in the area of establishing enforcement mechanisms since the report was written (paras. 27 and 28)?

6. What is the status of the Convention in relation to national law? Can the provisions of the Convention be invoked in court?

7. What further legislative work has been completed since the report was written? What is the situation regarding the new Children's Act?

8. Please provide information on the measures taken to improve the mechanisms for the collection of statistical data and other necessary information on the status of children as a basis for designing programmes for the rights of the child and indicate whether there is a need for technical assistance in this area. What research is undertaken or planned in these areas?

9. Please describe steps taken to implement article 4 in regard to the allocation 'to the maximum extent of (...) available resources for the rights of the child'. What proportion of the national budget is allocated to social priorities for children in official budgets, both central and local? What indicators or target figures are used in this context?

10. To what extent is international cooperation designed in order to enhance the implementation of the Convention? Are there further suggestions in this regard? What share of international assistance is devoted to programmes which benefit children?"

4. Mr. HAMMARBERG praised the positive aspects of the report of Namibia. He welcomed the statement published as The Policy of the Government of the Republic of Namibia on Children, which demonstrated that country's political will to improve the lot of children. He also welcomed the references to the Convention, the provision for an independent Ombudsman, the National Programme of Action for the Children of Namibia (one of the first such Programmes to be drawn up) and the readiness to involve non-governmental organizations. In all those ways the Government had shown itself to be admirably ambitious. There was, however, a need to update some of the information. He asked whether, for example, the new Children's Act had been discussed in Parliament, or even passed: the report referred mostly to old legislation which had existed under apartheid. He also wondered whether there had been any opportunity to evaluate the work of the Ombudsman. The needs of children were often overlooked when other matters also claimed attention.

5. Mrs. BELEMBAOGO, after associating herself with Mr. Hammarberg's praise of the report, said that she was also concerned about the revision of the Children's Act. In addition she wished to know how customary law sat with the written legislation. She asked which of the two took precedence and which was the more respected by the population.

6. Mrs. SANTOS PAIS said that she was struck by how comprehensive the report was, particularly given that Namibia, as a country, had been in existence for so short a time. She hoped that the Convention on the Rights of the Child, which was also recent, had provided inspiration for Namibia's

legislation. She welcomed the appointment of an Ombudsman, the various awareness campaigns, the street marches by children - an original way of bringing the issue to public attention - and the participation by children in the running of schools. She added that the self-criticism in the report - on non-discrimination, for example - was refreshing. She noted that there had been a recommendation to appoint a National Ombudsman for Children. She asked whether there had been such an appointment, whether the Ombudsman was independent and how children could reach him or her. Lastly, she asked about the status of the Convention in relation to national legislation. She was aware that agreements that had been ratified were self-executing, but there could be exceptions. Judges took various aspects of the law into consideration and she wondered how discrepancies between the Convention and national legislation - for example with regard to discrimination on the basis of sex (paras. 44 and 45) - were dealt with. She wondered whether in such cases the Convention could be invoked in the courts.

7. Mrs. SARDENBERG said that two opposing factors - on the one hand the legacy of war and poverty left by apartheid and on the other hand a Government with a strong commitment to solving its people's problems - had made for a very interesting report. She had three questions. First, given that a considerable amount of South African legislation was still in force, she asked what changes there had been and how Namibia dealt with conflicting legislation. Secondly, she wished to hear about any progress in the various initiatives mentioned in the report, such as the development of enforcement mechanisms for the Convention. Lastly, she asked what action had been taken on collecting data about women and children in Namibia.

8. Mr. HAMMARBERG, taking the previous question about customary law a step further, asked for further details about traditional practices at local level, particularly as they affected women's inheritance rights. He asked how the Government coped with the widespread lack of understanding of parliamentary laws. He also requested more information on the Government's database. He wondered whether it had been possible to integrate into it not only the targets of the World Summit for Children but also the provisions of the Convention.

9. Mgr. BAMBAREN GASTELUMENDI pointed out that the report did not specify what proportion of the national budget was devoted to children, of whom one third suffered from malnutrition and many more had been affected by the war. The money allocated to them was therefore particularly important.

10. Mrs. EUFEMIO welcomed the participation of non-governmental organizations (NGOs) and pointed out that with proper coordination their work could be even more effective. She asked whether their activities would take place on a country-wide basis.

11. Mr. KOLOSOV asked what the most fundamental changes in the new Children's Act were to be. It was difficult to tell from the report what changes from the 1960 Act were necessary. He also asked, in view of the fact that the Namibian Constitution was one of the most progressive in the world, whether there were any plans to accede to other human rights treaties and what obstacles there might be to doing so.

12. Miss MASON, welcoming the fact that the Namibian delegation was led by a person with real responsibility for the welfare of children, wanted to know about the programmes to which reference was made in the report, how substantial they were and whether it was too soon to measure their success. She also asked which provisions of the Convention had been incorporated into the Constitution; the answer to that question would also indicate the Government's priorities.

13. Mrs. AMATHILA (Namibia) said that the new Children's Act was nearing completion. A draft was being circulated to ministries and other interested parties and comments from informed sources were still coming in. She hoped that it would pass into law in the 1994 session of Parliament. Aspects that were still under consideration included the liability for maintenance of children in single-parent families and the rights of the children of unmarried women. The Government was determined to get away from the concept of "illegitimacy".

14. The new Children's Act also simplified adoption procedures by making it possible for women, including unmarried women, to adopt children, unlike previous legislation which covered only adoption in urban areas and precluded any significant involvement by women in the welfare or upbringing of children or any role as family breadwinner.

15. Turning to the question on customary law, she said that the new Namibian Constitution had overturned some of the traditional practices of ethnic groups. It was hoped that by the end of 1994, customary and other laws which discriminated against women would be replaced by more equitable legislation. Despite some reluctance on the part of ethnic groups and traditional leaders to relinquish long-standing customs, compromises had been found and attitudes were changing. A Traditional Leaders Act was at the preparatory stage and aimed to define their role and responsibilities. A Women and Law Committee had been set up to review all laws, customs or other practices which discriminated against women. The first success had been in the area of inheritance laws which had previously meant that a wife, on the death of her husband, had to surrender his property to her husband's male relatives and was often forced to leave her home. Following consultations with and among traditional leaders, Parliament had decreed that widows were entitled to inherit their husbands' property. A further victory had been a change in the situation of community in property within marriage. Formerly, if a couple divorced, any property or possessions belonging to the wife had to be shared with the husband. However, under new provisions, only jointly owned property had to be shared.

16. Similarly, the tax laws had been amended to rectify the anomaly whereby, prior to independence, taxes on a wife's earnings benefited the husband as head of the family.

17. In reply to the point raised by Mgr. Bambaren Gastelumendi on national budgetary allocations, she said that there were four priority development sectors, including agriculture and rural development, education, health care and housing, selected in view of their particular impact on the welfare of the

community and children in particular. In 1993 for example, the Ministry of Education had received 28 per cent of the national budget, a higher percentage than in any other African country. Fifteen per cent of the national budget had been allocated to health and 4 per cent to housing. The general health services had received a total of N$ 119 million and a further N$ 151 million had been spent on community health services. In the same year, the Ministry of Education received N$ 789.7 million of which 51 per cent was spent on pre-primary and primary education.

18. On the question of the Ombudsman, she said that the Namibian Constitution provided for an independent Ombudsman who was empowered to investigate complaints regarding the violation of constitutional rights and freedoms and take immediate remedial action. The Ombudsman had been directly involved in the Child Rights Workshop, held in Opuwo in May 1993, together with teachers from the North, community leaders from Opuwo, UNICEF, NGOs and school authorities.

19. Namibia was an open society and had established numerous channels through which children could appeal for help, including a child help line whose telephone number was frequently broadcast on the radio. The help line provided counselling to children on a range of problems including abuse. The media were widely used in order to inform the population not only on the Convention but also on the new Constitution. Furthermore, in July 1993 a Women and Child Abuse Centre had been set up. Children were informed of how to find help through easily understood and accessible documentation distributed in schools and communities, including a school video entitled "Let's talk".

20. Namibia had prohibited the use of corporal punishment in schools and teachers were urged to promote "discipline from within". Initially, the communities had opposed what they saw as an unwarranted relaxation in discipline, but the measures had gradually borne fruit as shown by an increase in the examination pass rate.

21. With regard to the question on the relationship between domestic law and the Convention, she said that prior to any decision by Parliament on acceding to an international treaty or instrument, extensive discussions and consultations were held among the Government itself and the population. If it was felt that the instrument was in any way incompatible with the Namibian Constitution, a reservation to the particular provision in question would be entered, although thus far, such a move had not been necessary.

22. The major problem facing Namibia was the speed of accession to international instruments. As a newly independent country, Namibia had had to spend a great deal of time formulating domestic legislation relevant to its new status. It had also had to cope with the problem of the inexperience of the people involved in drafting the legislation. However, there were priority areas, including the Convention on the Rights of the Child and the National Programme of Action for the Children of Namibia and, of course, the Children's Act.

23. On the question of malnutrition in Namibia, it was most prevalent in cities where many young mothers, finding it hard to cope and look after their children, often turned to alcohol as a form of release from their problems. It should be remembered that approximately 50 per cent of households in Namibia were headed by women. There was still room for improvement in terms of community care, but Namibia was gradually moving the emphasis away from curative care towards preventive care and was distributing information on nutrition and feeding programmes and providing health education at all levels.

24. NGOs played an important role in Namibia where they commanded a high level of respect and helped to ensure that the delivery of services remained decentralized through representation in all 16 regions. The Legal Assistance Centre helped to monitor implementation of the Convention and provided free legal advice to members of the population unable to afford to pay a lawyer. In response to Mr. Hammarberg's request for more information on data collection, she said that the database system in Namibia was still in its infancy. Namibia had just finished processing the 1991 census, and the second democratic survey drawn up by the Ministry of Health had just been compiled. It would be some time before the National Programme of Action for Children, for example, could be monitored or assessed.

25. The CHAIRPERSON thanked the representative of Namibia for her detailed replies to the Committee's questions; she requested further information on social security, financial assistance, or welfare programmes targeting female-headed households.

26. Mr. KOLOSOV asked for clarification on article 143 of the Namibian Constitution which stated that "All existing international agreements binding upon Namibia shall remain in force unless and until the National Assembly acting under article 63 (2) (d) hereof otherwise decides". He asked whether some human rights treaties acceded to by the previous regime were still in force or whether it was necessary to inform the depositaries of Namibia's succession.

27. Mrs. SANTOS PAIS requested clarification on the statement in the written answers to the Committee's questions that "unless otherwise provided by the Constitution or Act of Parliament, international agreements which are ratified by Namibia seem to be self-executing unless an Act of Parliament states otherwise", as the choice of the word "seem" threw doubt on the affirmation and on whether there was full compliance with article 4 of the Convention.

28. Mrs. AMATHILA (Namibia) said that the Convention had been unanimously approved by the Namibian Parliament, and no further action was required for it to be in force in Namibia. The use of the word "seem" had been misleading. The new Children's Act would provide a support for the Convention.

29. One of the reasons why so many families were headed by women was that under the contract labour system many men were absent for years and some never returned. Many town-dwellers also seemed to be reluctant to marry, and men often preferred to live with women without taking on family responsibilities. Efforts were being made to compel absent fathers to pay maintenance, and under

the Labour Act their wages could be garnished. The point would also be covered in the Children's Act. As far as welfare programmes were concerned, the Government did not want people to depend on hand-outs. It had therefore introduced programmes to help women earn their living in such practical trades as brick-making; food-for-work programmes had also been established. Under the new Children's Act welfare would be targeted at the most needy cases.

30. For many years South Africa and Namibia had been isolated by the rest of the world and no international treaties had been signed on Namibia's behalf. The reference in the Constitution was to treaties relating to Walvis Bay. Namibia had had to agree that those treaties would remain binding in order to gain its independence. However, the Parliament still had the right to denounce any treaty.

31. The CHAIRPERSON drew attention to the section of the list of issues entitled "Definition of the child" issued in document CRC/C.4/WP.4 which read:

"Definition of the child

(art. 1 of the Convention)

1. What is meant by 'child', in the meaning of article 1 of the Convention, under national present or proposed legislation?

2. What legislative measures are envisaged to remedy the gender bias referred to in paras. 39 and 45 of the report including in the area of inheritance rights?"

32. Mrs. SANTOS PAIS said that on page 6 of the written replies the term "infant" was used in the definition of the child. She would like to know what "infant" meant. Paragraph 37 of the report seemed to mean that children could not exercise their rights independently until the age of 21, but it was also true that from age seven a child could be convicted of a crime and from age 18 could be placed in detention. It seemed wrong that such children could not independently seek legal assistance. Furthermore, seven years was a very early age for criminal responsibility. The Convention encouraged States to establish a minimum age of criminal responsibility at or near 18 years.

33. Paragraph 39 of the report, on consent to sexual intercourse, said that a man charged with rape could escape conviction if the girl was a prostitute and seemed to imply that children under 18 might work as prostitutes. The Convention warned against that kind of situation. Namibian law seemed to discriminate against girls by introducing the notion of status of prostitute without establishing any liability for a man using a child prostitute.

34. Mr. HAMMARBERG said that he agreed with the comments made by Mrs. Santos Pais concerning the age of criminal responsibility. Furthermore, paragraph 33 of the report, concerning child labour, said that children under the age of 14 were forbidden to work in factories or mines except as authorized by Act of Parliament. He would welcome some clarification about the principle involved and about any exceptions made so far.

35. Paragraph 45 said that a minor boy became a major upon marriage, while a minor girl who married fell under the guardianship of her husband. Thus, a 16 year-old boy could marry a 17 year-old girl and become her guardian. That situation was against the spirit of the Convention, and he would like to know what steps were envisaged to rectify it.

36. Miss MASON said that she also endorsed the comments made by Mrs. Santos Pais and would like to know whether prostitution was legal in Namibia or whether the content of paragraph 39 of the report amounted to a value judgement on girls.

37. Paragraph 40 stated that a child over the age of 7 could in theory be convicted of a crime. Leaving theory aside, how were children actually treated by the courts in Namibia? Referring to paragraph 37, she asked whether decisions as to whether a child could seek independent legal advice were taken by the authorities on a subjective basis.

38. While paragraph 38 said that the minimum age for voluntary military service was 18, paragraph 425 said that the Defence Act was silent on the minimum age for enlistment, but the policy of the Ministry of Defence was to accept only males who were at least 18 years of age. The point appeared to require clarification. She also wondered in that connection whether the eligibility of children aged 16 to obtain a licence for a firearm (para. 48) amounted to a constitutional right to bear arms.

39. Mrs. AMATHILA (Namibia) said that a child was an infant from birth until its first birthday. The references in the report were to legislation inherited from South Africa. Namibia was reviewing all such legislation with a view to removing discriminatory and unconstitutional laws. She would certainly refer the points made by the Committee to the Law Reform Commission. In the particular case of prostitution the Combating Immoral Practice Act No. 21 would have to be repealed because it was based on a discriminatory relationship between whites and blacks. For example, a white man accused of raping a black girl could escape punishment by claiming that the girl was a prostitute. Prostitution was not legal in Namibia and did not in fact constitute a great problem.

40. The question of the minimum age of criminal responsibility was being dealt with in the new Children's Act, as were many other issues of children in conflict with the law.

41. In response to Mr. Hammarberg's question about child labour she drew attention to paragraphs 6 and 7 on page 15 and paragraph 10 on page 16 of the written replies. The issue would also be covered in the Children's Act. One particular problem was that, while the law prohibited the employment of children at various ages in various kinds of work, it was common for children in rural areas to help their families with farm work. The authorities were concerned in particular to ensure that children did not miss school for that reason.

42. The CHAIRPERSON drew attention to the section of the list of issues entitled "General principles", in document CRC/C.4/WP.4 which read:

"General principles

Non-discrimination

(Art. 2 of the Convention)

1. Please indicate to what extent the provisions of article 2 are covered in present or proposed national legislation and in practice with regard to all possible grounds for discrimination spelled out in that article.

2. What specific measures are being taken to combat discrimination against girls, e.g. as in paras. 39, 44, 45 and cultural practices, attitudes and prejudices?

Best interests of the child (art. 3)

3. It has been mentioned in the report that many legislative and administrative measures have been taken to ensure the best interests of the child. Please indicate the main problems remaining in this respect.

Respect for the views of the child (art. 12)

4. Please indicate the ways in which the principle of respect for the views of the child is reflected in practice in all matters affecting the child."

43. Mgr. BAMBAREN GASTELUMENDI noted that while the report covered the problems of racial discrimination, there was little mention of sexual discrimination. He was particularly concerned by discrimination against girls in regard to education. He inquired whether any legislation existed to ensure the enjoyment of their right to education. Furthermore, he would welcome information on the legislation and social policies regarding the children of unmarried mothers. Were they the responsibility of the mothers alone, or were the fathers obliged to provide maintenance?

44. Mr. HAMMARBERG welcomed the news that efforts would be made to remove the current bias against women in Namibian legislation. He was also concerned by discrimination against girls in schools and had been apprised of cases where pregnant schoolgirls were unable to attend classes, during pregnancy and after the birth of their child, due to prejudice as regards their condition. He inquired what measures were foreseen to prevent such discrimination, particularly since schoolteachers often fathered the children in question.

45. Mrs. SANTOS PAIS stressed the importance the Committee attached to the general principles, particularly non-discrimination which should be the guiding principle for all countries when implementing the Convention as well as for Namibia during the current reform of its legislation. Aside from the situation of unmarried mothers, she wondered whether there was any connection between the legal age of marriage in Namibia, which was lower for girls (15)

than for boys (18) and the high drop-out rate of girls in secondary education. The report had highlighted the discrimination existing against children born out of wedlock, but she was reassured by the statement of the representative of Namibia that the matter would be taken into account when amending the relevant legislation. Turning to the encouraging information contained in the report, she welcomed the fact that children over the age of 10 were invited to give their consent in cases of adoption. Such provisions did not exist in the legislation of many other countries. She also appreciated the active involvement of students in school and university matters. She suggested that that aspect should be highlighted in the Committee's concluding observations as an example to be followed by other countries. More importantly, she hoped that, by voicing their opinions, children themselves would help to change attitudes and to enforce the new legislation against corporal punishment.

46. Mrs. EUFEMIO, referring to the discrimination prevailing against illegitimate children, and the tendency for fathers to fail to acknowledge their paternity, inquired whether any programmes existed to change such attitudes among men as well as women. Such schemes might be useful pending the introduction of the new legislation on the matter.

47. Mrs. SARDENBERG said that sexual discrimination seemed to pervade Namibian society and could be attributed to its deep-rooted traditions such as the importance of the family unit, which while valuable in some respects also served to perpetuate discriminatory attitudes. She inquired what steps the Government was taking to provide appropriate legislation on education. Would the current bias be removed from text books and were media campaigns planned to resolve the problem? She was greatly impressed by the level of respect for children's views in Namibia, but inquired whether the National Youth Council had in fact been established, and if so, what were its goals?

48. Miss MASON welcomed the participation of children in judicial and educational matters as well as in international forums. However, she was concerned that the views of children might not be respected within the family unit given Namibia's particular customs and culture, which were undoubtedly more traditional in rural areas. She inquired to what extent the views of children were actually respected throughout the country.

49. Mrs. BELEMBAOGO, referring to the National Youth Council, asked what legal safeguards existed to ensure the political independence of its members who should be able to voice their own views in national and international forums.

51. The remarks concerning traditional values and the rural way of life were especially pertinent in the African context. New legislation would not be sufficient to change attitudes, particularly towards girls in the rural communities. A solution must be found at the regional level, where regional counsellors should work closely with local chiefs and women's groups to provide information on new legislation. Such projects were envisaged, but once launched miracle results could not be expected. The experience of women's programmes had revealed an unwillingness to accept what were considered Western ideas. However, she was confident that with good role models and the assistance of local leaders such issues would be resolved. Furthermore, the traditional role of the extended family was fast being eroded in a society which advocated freedom of speech and democracy. Conflicts arose between children and their parents, who disapproved of new legislation. The Government must first and foremost educate community leaders, who should in turn pass on the information within the community.

52. As to the question about discrimination against girls, she admitted that while girls were not discouraged from attending school they were certainly far fewer in number than boy pupils in the upper grades. The principal cause of falling attendance was teenage pregnancies, in which unfortunately teachers and other professionals were often involved. Children must be taught greater sexual responsibility, but so far there were no specific government programmes along those lines and so the activities of the National Youth Council would be relied upon. Moreover, the State made no general provision for single parents assisting only in special cases where the mother was unable to cope, since it did not wish to discourage marriage. However, a number of programmes had been launched to encourage women to work and earn their own money, which should increase their independence. One of the tasks for the Law Reform Commission would be to ban the term "illegitimate child" so as to ensure equal treatment for all children including those born out of wedlock. Unfortunately, since Namibia was a Christian country it was difficult to eliminate such prejudice. A recent achievement of the Commission in the area of racial discrimination had been legislation providing that a child born of a foreign mother could obtain Namibian nationality. On the subject of education, she confirmed that the Ministry of Education had drafted a regulation allowing girls to return to school after the birth of their children. As to the problem of teachers getting their pupils pregnant, unfortunately the girls concerned tended to protect them and lay the blame on schoolmates. Although Namibian legislation clearly stipulated that such teachers should be dismissed, it was difficult to enforce.

53. Mgr. BAMBAREN GASTELUMENDI sought further clarification regarding the legal position of fathers who failed to assume their obligations vis-à-vis their children.

54. Mrs. AMATHILA (Namibia) replied that under the Children's Act the payment of maintenance was guaranteed through a so-called "stop order". When legal action was taken against a father for failing to pay maintenance for his child, the Government instructed his employers to take the corresponding amount directly off his salary.

55. Miss MASON said that it was not unknown in her country for men in such circumstances to resign from their jobs in order to avoid paying maintenance. Without wishing to be chauvinist, it had to be admitted that women were more open to change, hence the success of the Namibian programmes focused on them. She suggested that the Namibian Government should consider ways of encouraging men to accept greater responsibility for the upbringing of their children, which was not customary in black society.

56. Mrs. AMATHILA (Namibia) said that at the outset efforts had been focused on women, as it had been felt important that they should understand the issues involved. Meetings for women only had been organized so that they would not be influenced by their menfolk. In future, activities would be targeted at men too with a view to finding appropriate solutions.

57. Mr. HAMMARBERG said that regrettably such attitudes to parenthood were not confined to men in black societies but were a universal problem.

The meeting rose at 1 p.m.